

**LETTER OPINION
2004-L-50**

July 23, 2004

The Honorable Jerry Klein
State Senator
PO Box 265
Fessenden, ND 58438-0265

Dear Senator Klein:

Thank you for your letter raising several questions about the authority and control over certain park land, and improvements on it, formerly leased by the city of Harvey to the Harvey Park District.

For the reasons indicated below, it is my opinion that when the park land lease from the city of Harvey to the Harvey Park District expired, the authority and control over the park land and improvements on it reverted to the city. The city may, at its option, permit the park board to continue to occupy and manage the park land consistent with the terms and conditions of the prior lease, or it may remove the park district from all or any part of the park land.

ANALYSIS

You indicate that the city of Harvey and the Harvey Park District entered into a long-term lease of some park land owned by the city. The lease expired in 1997 and was never formally renewed. The park district has continued to maintain and improve the park land until the present time. Questions have arisen about which political subdivision has authority and control over the park land and its improvements following the lease's expiration.

A park district is a separate political subdivision that may be created in a city and has perpetual succession. See N.D.A.G. 2003-L-09; N.D.C.C. § 40-49-04. The board of park commissioners has the authority to “[a]cquire by purchase, gift, devise, condemnation, or otherwise, land anywhere within this state, or outside this state if located adjacent to a boundary of this state and of the park district, for parks, boulevards, and ways.” N.D.C.C.

§ 40-49-12(1). “This office has previously determined that a lease constitutes an acquisition of land for purposes of N.D.C.C. §40-49-12(1).” N.D.A.G. 97-L-159. Under that provision, a park board has “the sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon.” N.D.C.C. § 40-49-12(1).

As indicated in your letter, the park land lease expired in 1997 and was never renewed. A real property lease expires at the end of the agreed upon term. N.D.C.C. § 47-16-14(1). When the lease expired and was not renewed, the park board’s sole and exclusive authority to maintain, govern, and improve the land also expired. Section 47-16-06, N.D.C.C., does provide that if a lessee of real property remains in possession after the expiration of a lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the lease on the same terms for a period not exceeding one year. While the park district remained in possession of the park land after expiration of the lease, there is no indication in your letter that the city accepted any rent from the park district after the expiration of the lease. If that is the case, then the statute would generally not apply and it could not be presumed that the lease was renewed.¹

Nevertheless, a “landlord may elect, when a tenant continues in possession after the expiration of his lease, to treat him as a trespasser, or as continuing the lease of the former year.” Wadsworth v. Owens, 130 N.W. 932, 934 (N.D. 1911). Thus, the city may, at its option, permit the park district to occupy and manage the park land consistent with the terms and conditions of the prior lease or it could remove² the park district from all or any part of the park land.

Questions have also been raised about the improvements to the park land made both during and following the lease’s expiration. As indicated above, by statute, the board of park commissioners had the sole authority to maintain, govern, and improve the park land during the time the lease was in effect. N.D.C.C. § 40-49-12(1). The statutory right of the park board was tempered somewhat by the language of the lease which prohibited “alteration, addition or changes . . . in or about said buildings or premises . . . without the written permission of the [city of Harvey].” Presumably, the improvements made to the park land over the years have either been approved or acquiesced in by the city. However, now that the lease has expired and not been renewed, the authority and control

¹ The provision dealing with the lessor accepting rent from the lessee may not always be necessary if there is other evidence that the landlord consents to the renewal or extension of the lease by the tenant. See Wadsworth v. Owens, 130 N.W. 932, 934 (N.D. 1911).

² See generally N.D.C.C. §§ 33-06-01(4) (eviction of holdover tenant) and 32-03-28 (damages for tenant willfully holding over).

over the improvements likewise revert to the city. See N.D.C.C. § 47-06-04 (“When a person affixes that person’s property to the land of another without an agreement permitting that person to remove it, the thing affixed belongs to the owner of the land, unless the owner of the land chooses to require the former to remove it.”). The lease is silent as to the disposition of any fixtures or improvements upon its expiration. Consequently, the control and authority over the fixtures and improvements belong to the city as the owner of the land. Id.

Based on the foregoing, it is my opinion that when the park land lease from the city of Harvey to the Harvey Park District expired, the authority and control over the park land and any improvements on it reverted to the city. The city may, at its option, permit the park board to continue to occupy and manage the park land consistent with the terms and conditions of the prior lease, or it may remove the park district from all or any part of the park land.

You also ask what methods are available to park districts to obtain property. As indicated above, the authority of park districts to acquire property is set out in N.D.C.C. § 40-49-12(1). See also N.D.C.C. § 40-49-04(3) (acquiring real and personal property for use as parks by a park district).

Finally, you ask whether park districts are responsible for taxes and assessments on property they do not own or lease. Generally, all property belonging to any political subdivision is exempt from property taxation. N.D.C.C. § 57-02-08(3); see also N.D. Const. art. X, § 5. Thus, the park land belonging to the city is exempt from property taxation. Although certain property owned by a political subdivision but held under a lease is taxable to the lessee under N.D.C.C. §§ 57-02-04(1) (any possessory interest) and 57-02-26(1) (lease for a term of years), those provisions would not apply where, as here, there no longer is a lease in existence and even if there were, the lessee is also a political subdivision whose property would not be subject to property taxation. See N.D.C.C. § 57-02-08(3); see also N.D.A.G. 88-7 (possessory interest in government owned real property held by nonexempt person is subject to taxation on the value of the possessory interest); N.D.A.G. Letter to Tuntland (Dec. 2, 1980) (“We have previously held that when real property owned by a city or other governmental entity is leased to a nongovernmental lessee who cannot establish a right to an exemption, that lessee’s leasehold interest is subject to taxation pursuant to section 57-02-04(1), N.D.C.C., and if the lease is for a term of years, the whole value of the property is assessed to the lessee, as provided in section 57-02-26, N.D.C.C. . . .”) (emphasis added).

Park districts are not exempt from payment of special assessments; however, that obligation only applies if the benefited property belongs to the park district. See N.D.C.C.

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§ 40-23-07. Since the property in question does not belong to the park district, it would not be liable for special assessments absent some agreement to the contrary.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. §54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).